



Europa

en

The European
Commission

Internal Market

Industrial Property

▶ [Industrial Property](#)

▶ [Community Trade Mark](#)

Exhaustion of trademark rights: Commission organises meetings with Member States and interested parties

On 26 and 28 April 1999 the European Commission organised two important meetings on the question of exhaustion of trademark rights and the possible effects of a change from the present Community-wide exhaustion regime to a system of international exhaustion, notably as regards allowing "parallel" imports (i.e. outside manufacturers' official distribution networks) into the EU from countries outside the Union. The 26 April meeting involved a presentation by researchers from the NERA institute in London to Member State representatives of a [study on trade mark exhaustion which has been carried out for the Commission by NERA](#). On 28 April, the Commission held a hearing at which some 180 representatives of interested parties could express their views on the NERA study, the whole issue of the trademark exhaustion regime and the possible impact of such a change.

Information from the meetings with the Member States and interested parties, together with the NERA study, will provide the Commission with an extensive basis for further analysis of this important and complex issue. Acting Single Market Commissioner Mario Monti will present a summary of the outcome of the two meetings to the Internal Market Council on 21 June 1999, when discussion on the question of exhaustion of trademark rights will continue following an initial debate at the 25 February 1999 Internal Market Council.

The EU trade mark regime, established by a Council Directive adopted in 1989 (89/104/EEC), is based on the system of Community exhaustion, whereby a trademarked good may be sold in any Member State once it has been put on the market elsewhere within the Single Market, as opposed to international exhaustion, whereby a trademarked good could be sold in any Member State once it has been put on the market anywhere else in the world. Some trademark holders are using Community exhaustion to prevent "parallel" imports into the EU of their branded goods.

The NERA study shows that the issue is very complex and that a change from Community to international exhaustion may have an impact not only on prices, but also on numerous other aspects (such as product availability, after-sales service, distribution agreements and market segmentation). The impact would be minimal for certain sectors (alcoholic drinks, confectionery) whereas it may be significant for others (consumer electronics, footwear and domestic appliances).

The NERA study indicated that a change of regime would have different impact on different sectors and that the effects of a change largely will depend on whether such a change is carried out unilaterally or through bilateral or multilateral agreements. At the 26 April meeting the Member States asked questions to the NERA researchers and commented on the study and also on the entire question of exhaustion of trademark rights. From this meeting it would seem that some Member States have clear ideas on this issue, but a large majority of Member States are still carrying out



WHAT'S NEW

internal consultations in order to prepare their position.

The 28 April hearing was attended by about 180 representatives of various interest groups including trademark holders in many industrial sectors (e.g. software, chemicals, phonograms and motor vehicles), consumers, parallel traders and retailers. Strong arguments were presented both for keeping the present Community exhaustion regime and for changing to an international exhaustion regime. Arguments for keeping the current regime included the suggestion that an international exhaustion system would reduce the economic value of trademark rights, damage innovation and would decrease investment, with unemployment as a result. Another argument against international exhaustion put forward by several participants was that they claimed there was a strong link between parallel trade and counterfeiting. The arguments for a change of regime were mainly concentrated on consumer benefits in terms of lower prices and wider product availability.



Date: 30 April 1999

Contact: markt-e3@cec.eu.int

[[Update on the Single Market](#)] - [[Economic Reform](#)] - [[Financial Services](#)] - [[Financial Reporting & Company Law](#)] - [[E-Commerce](#)] - [[Media](#)] - [[Commercial Communications & Unfair Competition](#)] - [[Data Protection](#)] - [[Intellectual Property](#)] - [[Industrial Property](#)] - [[Free Movement of Goods](#)] - [[Services & Establishment](#)] - [[Professional Qualifications](#)] - [[Postal Services](#)] - [[Public Procurement](#)]

